

75-2-209 Sources from which elective share payable -- Elective share amount -- Unsatisfied balance.

- (1) In a proceeding for an elective share, the following are applied first to satisfy the elective-share amount and to reduce or eliminate any contributions due from the decedent's probate estate and recipients of the decedent's nonprobate transfers to others:
 - (a) amounts included in the augmented estate under Section 75-2-204 that pass or have passed to the surviving spouse by testate or intestate succession and amounts included in the augmented estate under Section 75-2-206;
 - (b) amounts included in the augmented estate under Section 75-2-207;
 - (c) the value at the decedent's death of the decedent's separate property, as defined in Section 75-2-208, that passes or has passed from the decedent to the decedent's surviving spouse by reason of the decedent's death, whether by testate or intestate succession or by nonprobate transfer at the decedent's death; and
 - (d) the surviving spouse's homestead allowance, exempt property, and family allowance, if any.
- (2) If, after the application of Subsection (1), the elective-share amount is not fully satisfied or the surviving spouse is entitled to a supplemental elective-share amount, amounts included in the decedent's probate estate and in the decedent's nonprobate transfers to others, other than amounts included under Subsection 75-2-205(3)(a) or (c), are applied first to satisfy the unsatisfied balance of the elective-share amount or the supplemental elective-share amount. The decedent's probate estate and that portion of the decedent's nonprobate transfers to others are so applied that liability for the unsatisfied balance of the elective-share amount or for the supplemental elective-share amount is equitably apportioned among the recipients of the decedent's probate estate and of that portion of the decedent's nonprobate transfers to others in proportion to the value of their interests therein.
- (3) If, after the application of Subsections (1) and (2), the elective-share or supplemental elective-share amount is not fully satisfied, the remaining portion of the decedent's nonprobate transfers to others is so applied that liability for the unsatisfied balance of the elective-share or supplemental elective-share amount is equitably apportioned among the recipients of the remaining portion of the decedent's nonprobate transfers to others in proportion to the value of their interests therein.

Amended by Chapter 142, 1999 General Session